

## REMARKS

After the above amendments, Claims 382-402 are pending. Support for the new claims may be found in, *e.g.*, the prior pending claims.

### A. Section 112 Rejections

#### 1. Written Description Requirement

The Examiner has rejected Claims 1-11, 21-24, 28-30 and 375-381 under section 112 as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors had possession of the claimed invention at the time the application was filed. It is the Examiner's position that the binding of any metal ion by the peptides P<sub>1</sub> - P<sub>2</sub> is not supported by the specification as filed. This rejection is made moot by the above amendments of the claims.

#### 2. Lack Of Enablement

The Examiner has rejected Claims 1-11, 21-24, 28-30 and 375-381 on the basis that it would require undue experimentation to make and/or use the invention. It is the Examiner's position that the number of peptides covered by the claims is infinite and that it would require undue experimentation to synthesize the peptides and determine which bind metal ions.

In the interests of advancing prosecution,<sup>1</sup> the number of peptides covered by the claims has been substantially reduced. In addition, Applicants are submitting herewith a copy of the Declaration Of Dr. David Bar-Or ("Bar-Or Declaration") originally submitted in Applicants' copending application Serial No. 10/186,168. This Declaration provides additional data demonstrating the ability of the peptides covered by the claims to reduce the production of, and damage done by, reactive oxygen species (ROS).

In particular, data are presented in the Bar-Or Declaration showing that several peptides coming within the scope of the claims are able to reduce the metal-dependent production of ROS *in*

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<sup>1</sup> The fact that these amendments are being made is not, and should not be construed as, a disclaimer of any subject matter or an admission of the correctness of any of the Examiner's positions.

*vitro*.<sup>2</sup> See paragraph 2 of the Bar-Or Declaration. These peptides vary by size of the peptide, sequence of the peptide (including different sizes and types of amino acids), hydrophobicity, hydrophilicity and substituents.

The Bar-Or Declaration also presents data showing that the peptides of the present invention are effective *in vivo*. See paragraph 3 of the Bar-Or Declaration. This data is in addition to that presented in Examples 8 and 9 in the application. It should be noted that Example 9 provides evidence that the peptides of the present invention are effective in an animal model of a brain disease (ischemia followed by reperfusion).

For the foregoing reasons, it is submitted that this rejection is overcome, and the Examiner is asked to withdraw it.

### 3. Indefiniteness

The Examiner has rejected Claims 21-24, 28-30 and 375-381 as being indefinite because they are dependent on a non-elected claim. Applicants are not entirely clear about the Examiner's reasons for this rejection, but believe these claims are being rejected because they depend, in part, on withdrawn claims. However, these claims are withdrawn only because they are not drawn to elected species. The withdrawn claims will be rejoined and examined if the elected claims are found allowable, so cancellation of the rejected claims (or their counterparts in the new set of claims) is premature. MPEP § 809.02(c).

### B. Section 103 Rejections

The Examiner rejected almost all of the prior claims on the basis that the subject matter of those claims would have been obvious based on the teachings of various references and combinations of references. In the interests of advancing prosecution,<sup>3</sup> the claims have been limited

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<sup>2</sup> This data is in addition to the data presented in the Examples of the application.

<sup>3</sup> Again, the fact that these amendments are being made is not, and should not be construed as, a disclaimer of any subject matter or an admission of the correctness of any of the Examiner's positions concerning the prior art.

to a method of reducing the damage done by ROS in a neurodegenerative disease. It is submitted that the presently claimed method of reducing ROS in a neurodegenerative disease in an animal is not taught or suggested by the teachings of any of these references, alone or in any combination. Accordingly, the Examiner is asked to withdraw all of the section 103 rejections.

C. Change Of Inventorship

In view of the above amendments to the claims, the inventorship of the application needs to be changed. Accordingly, being submitted herewith is an amendment in compliance with 37 C.F.R. § 1.48(b).

**CONCLUSION**

It is respectfully submitted that the pending claims are in condition for allowance, and a speedy allowance of them is requested.

Respectfully submitted,

SHERIDAN ROSS P.C.

By: 

Gary J. Cornell  
Registration No. 32,020  
1560 Broadway, Suite 1200  
Denver, Colorado 80202-5141  
(303) 863-9700

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